United States Court of Appeals

for the

District of Columbia Circuit

TRANSCRIPT OF RECORD

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Court of Appeals, District of Columbia

OCTOBER TERM, 1905.

No. 1561. 366

JAMES T. BRADFORD, APPELLANT,

vs.

NATIONAL BENEFIT ASSOCIATION, A CORPORATION.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 31, 1905.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1905.

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APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 15, 1905.

In the Court of Appeals of the District of Columbia.

JAMES T. BRADFORD, Appellant,
vs.
NATIONAL BENEFIT ASSOCIATION, a Corporation. } No. 1561.

a Supreme Court of the District of Columbia.

NATIONAL BENEFIT ASSOCIATION, a Corporation, Plaintiff,
vs.
JOHN R. LYNCH, JEROME A. JOHNSON, Leonard C. Bailey, Robert H. Terrell, William S. Lofton, Howard H. Williams, Whitefield McKinlay, Winfield S. Montgomery, Wyatt Archer, John A. Pierre, James T. Bradford, and John R. Francis, Defendants. } No. 45851. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss*:

Be it remembered, that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:—

1 *Declaration.*

Filed December 24, 1902.

In the Supreme Court of the District of Columbia, Holding a Circuit Court.

NATIONAL BENEFIT ASSOCIATION, a Corporation, Plaintiff,
vs.
JOHN R. LYNCH, JEROME A. JOHNSON Leonard C. Bailey, Robert H. Terrell, William S. Lofton, Howard H. Williams, Whitefield McKinlay, Winfield S. Montgomery, Wyatt Archer, John A. Pierre, James T. Bradford, and John R. Francis, Defendants. } At Law. No. 45851.

The plaintiff, a body incorporated under the laws in force in the District of Columbia, and having its habitat therein, sues the de-

fendants, co-partners doing business under the name of to-wit, Capital savings bank, for money payable by the defendants to the plaintiff, for that heretofore, to-wit, on the 25th day of November, 1902, the defendants, as such co-partners, were indebted to the plaintiff in the sum of four thousand eight hundred and fifty-five dollars and fifty-nine cents for money theretofore deposited by the plaintiff on its demand, and being so indebted, they, the said defendants, undertook and faithfully promised and assumed to pay to the said plaintiff, the said sum of four thousand eight hundred and fifty-five dollars and fifty-nine cents, when and as the same should be demanded of them by the plaintiffs; and on to-wit, the said
2 25th day of November, 1902, the plaintiff duly demanded from the defendants, payment of the said money, but the same was not paid, nor any part thereof, to the great damage of the plaintiff. And the plaintiff claims four thousand eight hundred and fifty-five dollars and fifty-nine cents, with interest thereon from the 25th day of November, 1902, besides costs.

A. A. BIRNEY,
JOSEPH H. STEWART,
Attorneys for Plaintiff.

The defendants are to plead hereto on or before the 20th day after service hereof, exclusive of Sundays and legal holidays.

A. A. BIRNEY,
JOSEPH H. STEWART,
Attorneys for Plaintiff.

DISTRICT OF COLUMBIA, *ss:*

I, Samuel W. Rutherford, on oath say that I am secretary of the National Benefit Association, which is a corporation duly organized under the laws in force in the District of Columbia and carrying on business therein; that I am familiar with the cause of action of the said National Benefit Association against John R. Lynch, Jerome A. Johnson, Leonard C. Bailey, Robert H. Terrell, William S. Lofton, Howard H. Williams, Whitefield McKinlay, William S. Montgomery, Wyatt Archer, John A. Pierre, James T. Bradford, and John R. Francis, sued for in the above declaration.

The said cause of action is as follows: The said several de-
3 fendants herein just above named are members of a joint stock company, or co-partnership, which under the name of Capital savings bank, until November 25th, 1902, pursued a banking and discount business in said city of Washington.

The said Capital savings bank is not incorporated, but is a partnership under voluntary articles of agreement among the members. The plaintiff, National Benefit Association, for a long time prior to November 25th, 1902, was a depositor of moneys with said banking company, and on that day said defendants as such banking company were indebted to said National Benefit Association for moneys

so deposited with them in the sum of four thousand eight hundred and fifty-five dollars and fifty-nine cents. On said day, said Capital savings bank closed its doors and refused to pay the checks of its depositors drawn upon it, and refused to pay a check of the said National Benefit Association properly drawn by it upon its said deposits.

Since that day said defendants as said banking company have not resumed business and have not paid their depositors and have refused to pay them or any of them. On this account, said defendants are justly indebted to the said National Benefit Association in the full sum of four thousand eight hundred and fifty-five dollars and fifty-nine cents, with interest from November 25th, 1902, exclusive of all set-offs or just grounds of defense whatsoever.

SAMUEL W. RUTHERFORD,
Secretary National Benefit Association.

Subscribed and sworn to before me this 24th day of December, 1902.

GEORGE M. BOND,
Notary Public, D. C.

[SEAL.]

4 *Plea.*

Filed July 1, 1903.

In the Supreme Court of the District of Columbia.

NATIONAL BENEFIT ASSOCIATION
vs.
JOHN R. LYNCH ET AL. } At Law. No. 45851.

The defendant James T. Bradford for pleas says:
First. That there is no such corporation as the plaintiff.
Second. That he never undertook and promised as alleged.

JOHN RIDOUT,
Attorney for Defendant.

I, James T. Bradford, on oath say that I am one of the defendants named in the declaration herein. I deny the right of the plaintiff to recover against me the whole or any part of the amount claimed in said declaration. The grounds of my defence are that I am not now, nor have I ever been, a co-partner with the defendants, or others, in the banking business, under the name of the Capital savings bank, or any other name. I never, either individually, or as a member of any joint stock association, or co-partnership, received any money on deposit from the plaintiff, and on the 25th day of November, 1902, I was not, nor was I at any other time either individually, or as a member of any joint stock association, or co-partnership, indebted to the plaintiffs in any sum whatever, nor had it at

that or at any other time, any money on deposit with me, either individually or as a co-partner, or shareholder, as alleged. The agreement under which the Capital savings bank was conducted
5 did not create any personal liability upon the shareholders, but limited the depositors' security solely to the assets of the bank, and this the plaintiff knew when, if ever, it became a depositor. The plaintiff gave no credit to this defendant, but on the contrary gave credit solely to the assets of the bank and in consideration of the agreement, of the bank to allow it interest on its balances agreed that it would look only to the assets of the bank and would in no event look to, or seek, to enforce any personal liability in respect of said deposits against this defendant and his associates. That the plaintiff gave no credit to the defendant, nor to any other shareholder.

That under the agreement between the shareholders, there was no personal liability upon them or any of them, and that plaintiff made its deposits in the Capital savings bank with that distinct understanding and agreement.

JAMES T. BRADFORD.

Subscribed and sworn to before me this 25th day of June, 1903.

WM. A. SCHAUMLOEFFEL,

[SEAL.] *Notary Public, Baltimore City, Md.*

Memoranda.

October 7, 1903.—Replication filed.

February 2, 1905.—Verdict for plaintiff for $4855.59, with interest from Nov. 25, 1902, *vs.* defendant Bradford, *et al.*

6 Supreme Court of the District of Columbia.

FRIDAY, *February* 17, 1905.

Session resumed pursuant to adjournment, Mr. Justice Barnard presiding.

* * * * * * *

NATIONAL BENEFIT ASSOCIATION, a Corporation, Pl'ff, *vs.* JEROME A. JOHNSON ET AL., Def'ts.	At Law.	No. 45851.

Upon hearing the motion for new trial filed herein, the same is hereby overruled and judgment on verdict ordered: Therefore, it is considered that the plaintiff recover against the defendants Jerome A. Johnson, Robert H. Terrell, Howard H. Williams, Wyatt Archer, William S. Lofton, Whitefield McKinlay, John A. Pierre, James T. Bradford, and Winfield S. Montgomery the sum of four thousand

eight hundred and fifty-five dollars and fifty-nine cents ($4,855.59), with interest thereon from the 25th day of November, 1902, at 6 per cent. per annum until paid, being the money payable by them to the plaintiff, by reason of the premises, together with its costs of suit to be taxed by the clerk, and have execution thereof.

Upon motion of James T. Bradford, and his co-defendants consenting he is hereby allowed a severance upon his appeal which he now notes to the Court of Appeals, and his bond for costs is fixed in the penalty of $100.

And further it is considered that the plaintiff take nothing by its suit against the defendant John R. Francis, and that he go thereof without day, and recover against the plaintiff his costs of defense to be taxed by the clerk, and have execution thereof.

Memoranda.

March 8, 1905.—Appeal bond of defendant Bradford filed

April 3, 1905.—January term prolonged 38 days to settle exceptions and bill of exceptions submitted.

April 6, 1905.—Time to file record in Court of Appeals extended to June 1", 1905.

Supreme Court of the District of Columbia, April 14, 1905.

NATIONAL BENEFIT ASS'N, Plaintiff,
vs.
JAMES T. BRADFORD ET AL., Def'ts. } At Law. No. 45851.

Now comes here James T. Bradford by his attorneys, and prays the court to sign, seal and make part of the record, his bill of exceptions taken during the trial hereof and heretofore submitted, which is accordingly done.

7 *Bill of Exceptions.*

Filed April 14, 1905.

In the Supreme Court of the District of Columbia.

NATIONAL BENEFIT ASSOCIATION
vs.
JAMES T. BRADFORD. } No. 45851. At Law.

Be it remembered, that this action came on to be heard before Mr. Justice Barnard and a jury, whereupon the plaintiff to maintain the issues upon his part joined, as between him and the defendant James T. Bradford, gave evidence tending to prove that by decree of the

supreme court of the District of Columbia passed January 5, 1903, in an equity cause therein pending certain receivers for the "Capital savings bank" alleged in the bill to be the firm name of a certain co-partnership, had been appointed and that among the books and papers of the said Capital savings bank, which came into the hands of said receivers, was a certain paper the relevant portions to the issues joined as aforesaid of which are as follows:

Articles of Agreement of the Capital Savings Bank.

1. Object.

The members of this company do hereby associate themselves together for the purpose of carrying on a general banking and discount business in the District of Columbia at such place or places within said District of Columbia as may be fixed and determined by the board of directors of the company.

8 2. Name.

The firm name of this company shall be Capital savings bank, city of Washington, District of Columbia, and under this name the business of the company shall be transacted.

3. Origin.

This partnership shall begin on the first day of October 1888 and shall terminate on the first day of October 1908, unless sooner dissolved in the manner hereinafter provided for.

4. Capital Stock.

Provides that capital shall be $50,000.00 in 500 $100.00 shares.

5. Officers.

That the officers shall be president, vice-president, secretary, treasurer and cashier, and a board of directors of president, vice-president, secretary, treasurer and eleven other members of the company. That the board of directors shall have the general conduct of the business.

7. Meetings.

Provides for periodical meetings of the company at times to be designated by directors and annual meetings.

9. Voting and Quorum.

Each member to have one vote for each share of stock. Proxies may be given to any other stockholders.

11. Expulsion.

Any member may be expelled by two-thirds vote of the company at any meeting.

12. Withdrawals.

Any member of the company may withdraw therefrom by giving thirty days' notice and settlement shall be made with him in
9 the manner hereinafter provided for. But the company reserves the right to postpone the payment of what may be due him from the company for ninety days after the date of filing of such notice of withdrawal.

14. Liability of Stock.

Each member hereby agrees to pledge the full amount of his stock to meet his personal obligations to the company and to satisfy any and every endorsement he may have given upon which money has been advanced by the company.

15. Distribution of Gain.

Redistribution of gains and profits shall be regulated by the board of directors.

16. Sale and Transfer of Stock.

No member shall transfer his stock or interest in the company to any person other than a member of the company except by consent of the board of directors or such committee thereof as shall be constituted for the purpose by said board of directors.

17.

Provides that upon withdrawal paid up stock and unpaid declared dividends shall be paid to such withdrawing member, but his share of undivided profits in the business shall go to benefit of the remaining members of the company.

18. Dissolution.

Company may be dissolved by two-thirds vote.

20.

Termination of rights or notice of withdrawal of any member of this company who gives notice of withdrawal therefrom shall cease from and after such notice to vote and participate in the meetings of this company.

Signed by James T. Bradford and others.

10 That the said agreement bore among a number of other signatures that of the said defendant in his handwriting and thereupon the plaintiff's counsel offered said paper in evidence,

whereupon the defendant's counsel objected but the court overruled the objection and admitted the said agreement as evidence to be read to the jury—to which ruling the defendant by his counsel excepted and thereupon counsel for the plaintiffs read said paper to the jury.

The plaintiff further gave evidence tending to prove that it became a depositor with said Capital savings bank, August 5, 1899, and that at the time of the failure of the said bank on November 24, 1902, there was due the plaintiff as such depositor $4855.59 no part of which has been paid.

Thereupon the plaintiff offered in evidence its original certificate of incorporation to which counsel for the defendant Bradford objected on the ground that it appeared from said certificate that the incorporators were not residents of the District of Columbia and that the said certificate was void on its face but the court overruled the objection and admitted the certificate in evidence to which ruling counsel for the said defendant excepted.

The paper was then read to the jury, its relevant parts being as follows:

Articles of Incorporation of the National Benefit Association, Recorded November 25th, 1898.

We the undersigned associate ourselves into a body corporate under the provisions of the Revised Statutes of the United States relating to incorporation and recite the name and purposes for such incorporation in the following articles:

11 ARTICLE 1. It shall be known as the National Benefit Association and its principal office shall be in the city of Washington, District of Columbia.

ARTICLE 2. Its object shall be to provide substantial aid to its members when by reason of sickness or accidental injury they become entirely disabied, temporarily from their business pursuits. Further to furnish a friend to their families or dependents in the event of their death, the fund therefor to be created by dues and assessments to be levied upon the members.

ARTICLE 3. It shall be perpetual in existence.

ARTICLE 4. The capital stock shall be the sum of two thousand dollars to be divided into two hundred shares of the par value of ten dollars each.

ARTICLE 5. It shall be controlled the first year by six persons whose names are signed hereto, and they shall meet and elect officers and construct their by-laws.

Signed by six persons.

Acknowledged November 23, 1898, before a notary public in the District of Columbia.

And thereupon the plaintiff rested.

12 And thereupon the defendant JAMES T. BRADFORD to maintain the issues on his part joined gave evidence in his own behalf be deposition wherein he testified in substance as follows:

On his examination-in-chief:

That he first purchased stock in the Capital savings bank prior to 1895 and on several occasions afterward prior to 1897, that he made no such purchases after 1897, that he sent a notice to the bank March 13, 1897, that he had sold the stock and asking them to transfer the stock to Howard H. Williams a stockholder. The letter was mailed from Baltimore and its receipt was acknowledged afterwards by the secretary of the bank, the witness produced a paper which he testified was a true copy of the original letter, which he made when he sent the original and had retained ever since, the same was given in evidence and is as follows:

BALTO., *March 13th*, 1897.

"To the president and board of directors of the Capital savings bank, 609 F St., Washington, D. C.:

I hereby give notice of my withdrawal as per constitution as a stockholder in said institution and direct that you transfer the stock standing in my name to Howard H. Williams Washington, D. C.

And oblige yours truly,

JAS. T. BRADFORD,
N. W. Corner Centre and St. Paul Sts.

(It is made Exhibit No. 1 to the deposition)

13 Afterwards saw several of the board also the president and treasurer and asked why stock had not been transferred to which they returned evasive replies.

He delivered the stock to the secretary for transfer and he still has it, that he continued as depositor in the bank and at its close in the latter part of 1902, had a balance there to his credit of over $13,000.00.

On cross-examination he testified that:

He first learned of this suit when informed of it by his attorney about 4 months after the failure, the next time he heard of it was when his attorney advised him the case was about to be tried.

That he had resided for the 62 years last pass*ed* in Baltimore.

Has no knowledge of having signed any articles of agreement. Has read the constitution of the bank—Does not understand that to be the same as the articles of agreement—Understands that he was elected a director—Was never an officer of the bank—never attended a meeting of the bank—Was a depositor in the bank, became such in its early history long before he purchased stock, first deposit was made over 12 years ago, and stayed with them ever since until the failure.

Knew all the officers all of whom knew him but does not think he was ever known as a director.

Is shown a leaflet or circular and states that he never saw one like it before, although his name is printed there as a director. Is shown another leaflet and states that he does not recall ever to have seen it or one like it.

These leaflets were offered in evidence over objection of
14 defendant's counsel—and as will hereinafter appear exception was duly saved when they were offered to be read to the jury.

Witness proceeded to testify that he first purchased 5 shares and then sold them—does not remember how long he held nor to whom he sold them.

About three to five years afterwards he purchased more stock and subsequently made other purchases until he had 30 or 40 shares in all.

Letter of March 13th, 1897 was addressed to the president and board of directors of the Capital savings bank, never received any acknowledgment of it. Sent the stock to the secretary shortly afterwards and received his acknowledgment of it as far as witness knows the letter may still be at the bank.

The secretary Mr. Terrell told witness that the letter had been received by the board—Witness never received any letter from the bank or the board notifying him of any action by the board, and so far as he knows, no action was taken, also talked to McKinlay, one of the directors about the letter. Howard H. Williams, who was already a stockholder was the person who purchased the stock, he lives in Washington, he made witness a deposit, amount of which witness does not remember, Williams agreed to buy all witness' stock between 30 and 40 shares. Witness received some dividends on the stock, cannot recall dates of receipt of dividends. Received none in 1902. Understood he was required to give notice to the president and directors of transfers of stock.

Never received their consent to transfer, understood it was his privilege to transfer the stock.

On re-direct examination the witness testified that he did not consider consent of the board necessary when sale was made to a man already a stockholder.

15 Never authorized publication of his name as a director nor ever consented to act as such. Was never in Washington to attend a meeting, his name was placed there without his authority. Never purchased any stock after sale to Williams, that was final.

As nearly as witness can remember, Terrell the secretary said to him in Washington, " We received your notice, or the bank received your notice and we will let you know in due time."

At the trial when defendant Bradford's deposition was being read and before said copy of said letter was read in evidence, Joseph H. Stewart testified that he was one of the receivers of the Capital savings bank in whose especial custody were the books and papers of said bank, that in compliance with a *subpœna duces tecum* served on him he had made careful search for and had been unable to find

the original of the letter of March 13, 1897, the copy of which is Exhibit No. 1 to Bradford's deposition.

Whereupon the defendant Bradford called as a witness Robert H. Terrell, who testified that he was secretary of the said bank from 1898 until it closed—that he was a director from 1895 until its close. Upon being shown the copy of Bradford's letter of March 13th, 1897, Exhibit No. 1 to Bradford's deposition, the witness testified that he knew that Bradford sent the original of which Exhibit No. 1 is a copy, to the bank. Saw the original in 1897, when received it was left with the cashier, it was communicated to the board. McCary was cashier. As secretary, witness had verbal communications with Bradford and told him the letter had been received and that board would act on it.

On cross examination the witness testified that his last com-
16 munication with Bradford was verbal, he then told Bradford that the board refused to act. That was in 1898. Said witness further testified that after that time he saw the defendant only once at a meeting of the board of directors; this was in April, 1902. A run upon the bank was feared and a special meeting of the board of directors was called, and Mr. Bradford attended.

Witness was secretary of shareholders' meetings and of directors' meetings; proxies were in writing. Thereupon the plaintiff's counsel exhibited to witness a paper which he testified was in the handwriting of McCary, the cashier, and *and* that the signature was that of the defendant Bradford and counsel for plaintiff then offered said paper in evidence, to which counsel for defendant Bradford objected on the ground that the paper was irrelevant and immaterial, but the court overruled the objection and admitted said paper in evidence, to which ruling counsel for the said defendant excepted, thereupon the paper was read to the jury, it is as follows:

Jno. R. Lynch, President. D. B. McCary, Cashier.

Capital Savings Bank.

WASHINGTON, D. C., *October* 9, 1899.

To whom it may concern:

This is to certify that I hereby authorize Mr. Douglass B. McCary to act for me and in my stead at the regular meeting of the stockholders of the Capital savings bank to be held on Tuesday evening, October 10, 1899.

JAS. T. BRADFORD.

17 Counsel for plaintiff then showed to the witness a paper purporting to be minutes of a meeting of directors held February 6th, 1900, which the witness testified were his minutes as secretary of such a meeting, counsel for plaintiff then offered the paper in evidence to which counsel for Bradford objected on the ground that the minutes of such a meeting subsequent to April 13, 1897, were too late to be relevant; that recitals in said minutes were not com-

petent evidence to bind Bradford, that the paper was not sufficiently authenticated to entitle it to be admitted in evidence, but the court overruled the objection and admitted the paper in evidence whereupon counsel for Bradford duly excepted. Counsel for plaintiff then read the paper to the jury, its relevant parts being:

Regular Meeting, February 6, 1900.

Quorum present: L. C. Bailey, J. T. Bradford. * * *
Mr. McKinlay made remarks suggesting reorganization. Mr. Bradford made remarks along same lines.
This paper is in pencil and not signed.

Counsel for the plaintiff then showed to the witness a paper purporting to be the minutes of a meeting of directors, held April 9, 1902, which the witness identified as the minutes made by him of such meeting of the board of directors; and the witness being then asked "Was Mr. Bradford present at the meeting? counsel for the defendant Bradford then and there objected upon the same grounds as are set forth above in respect of the paper of February 6, 1900, but the court overruled the objection, to which ruling counsel for
the said defendant duly excepted, whereupon the witness
18 answered that said Bradford was present, took part in the proceedings and made a motion to the effect that each member of the board of directors raise a certain sum of money.

Thereupon counsel for plaintiff exhibited to the witness written in pencil and the witness identified it as his original minutes as secretary of a meeting of the stockholders of said Capital savings bank held December 6, 1902, and testified that said minutes had never been recorded, and further testified that defendant Bradford's 40 shares were voted in his name at that meeting by a proxy. And the witness was then asked, Can you state from these minutes who acted as the proxy for Mr. Bradford in voting his shares? Thereupon counsel for said Bradford objected on the ground that proceedings at a meeting held subsequent to April 13, 1897, were too late to be relevant and also on the ground that the paper is not an official minute of a meeting but only a memorandum made by the witness to refresh his memory, but the court overruled said objection, to which ruling counsel for defendant Bradford duly excepted: and said witness then answered that from the minutes it appeared that Mr. McKinlay was the proxy.

And said witness being then shown a further paper dated December 20, 1902, testified that it was a list of the shares represented at a meeting of stockholders held December 20, 1902, the same being in his handwriting and made by him as secretary of said meeting, whereupon he was asked "Were Mr. Bradford's shares represented at that meeting?" to which question counsel for said Bradford objected but the justice presiding overruled said objection, to which ruling said counsel duly excepted, whereupon the witness answered "Yes, by Mr. McKinlay."

19 Then witness further testified that the stock standing in Bradford's name had never been transferred, and that it was in witness' possession. The certificates were afterwards produced by the witness; they were in the usual form and required that transfers be made on the books of the company. They represented 40 shares of stock,—some certificates were so assigned as to pass by delivery, others required Bradford's signature to a transfer which was wanting, these certificates were offered in evidence by plaintiff's counsel. They were objected to by defendant Bradford's counsel on the ground that they were irrelevant and immaterial, but the court overruled the objection and admitted the said certificates in evidence, to which ruling counsel for defendant Bradford duly excepted, counsel for plaintiff then exhibited said certificate to the jury.

Certain leaflets or circulars were then shown the witness who said he had seen them in the bank in the cashier's room, he had no part in preparing them, "he had seen them frequently in the bank, in the cashier's room, which was also the room where the directors met, but he had no part in preparing them."

On re-direct examination the witness testified that he turned the stock over to the bank, it was never transferred because witness was directed not to do so. The board arbitrarily refused. In reply to a question by the court witness testified that when he told Bradford of the bank's refusal to transfer the stock Bradford said he was within his rights.

Thereupon WYATT ARCHER, a witness for Bradford, testified as follows:

20 That he was a director and stockholder of said bank, remembers the receipt of the letter from Bradford dated March 13, 1897, distinctly, and it was discussed but no action was taken. Recalls a conversation with Bradford in which he said he intended to withdraw and that he had so notified the bank, that he needed the money and had sold his stock, that he had found a purchaser and that the bank had no right to refuse to transfer.

Counsel for Bradford then called as a witness, HOWARD H. WILLIAMS, who testified that he was a stockholder in said bank in 1897. In the early part of that year witness made an arrangement to take Bradford's stock, counsel for Bradford then exhibited to the witness a paper which he testified was in Bradford's handwriting, the paper was then admitted in evidence and read to the jury, it is as follows:

WASHINGTON, D. C., *March* —, 1897.

Sold 40 shares stock Capital savings bank, 604 F St. N. W., to Howard H. Williams at $90.00 per share.

Deposit.

One hundred dollars cash on receipt of stock, one-half cash eighteen hundred dollars ($1800.00) balance six notes of $300.00 each payable annually, interest payable semi-annually at 4 per cent.

JAMES T. BRADFORD.

Witness then testified that the paper was the arrangement that was drawn up between him and Bradford, as to his taking his stock,
21 that the arrangement was that if his stock could be transferred I would take it, but the directors refused to transfer the stock and therefore the negotiation was not completed."

On cross examination he testified that he did nothing more than to pay the $100.00 and demand the transfer to him of the stock. The $100.00 has never been returned to him—never voted the stock—never received any dividends on stock in his name or on the stock purchased from Bradford.

That witness continued to attend stockholders' meetings and to vote the three or four shares he owned before this transaction with Bradford; never had the Bradford certificates in his possession.

Counsel for Bradford then called as a witness WHITEFIELD McKINLAY who testified that he was a director and stockholder of the said bank for 12 years, that he had long known Bradford. The witness was then asked if Bradford had ever stated to him what his intention in attending stockholders' and directors' meetings after 1897 was. Said counsel offering to prove by the witness that at the time of attending such meetings Bradford had stated to him that his only intention in attending such meetings as he did attend was to do what he could to protect his interests as a large depositor to which question as explained by said offer, counsel for plaintiff objected, which objection the court sustained and declined to allow the question to be answered, to which ruling counsel for Bradford duly excepted, and thereupon defendant Bradford rested.

Counsel for plaintiff thereupon called as a witness one JOSEPH H. STEWART who testified that he is an attorney at law and one of the
22 receivers of the Capital savings bank; that when he and his co-receivers took possession of the books and papers of said bank they found in the cashier's office and director's room a number of printed leaflets, which were then produced to the witness and identified being the same shown to the witnesses Bradford and Terrell at their examinations. That before that time and while the bank was in operation he had received some of these leaflets from the cashier and some from the stockholders to give to people in order to get depositors to come to the bank. There was no secret about this being the literature of the bank; it was published and broadcastly sent out; that at the time a Mr. Jordan sued the bank, in April or May, 1902, the witness being a depositor, became apprehensive of a run on the bank, went then and met defendants Bradford and Bailey there. The cashier brought out some of these leaflets and witness and Bradford and the others discussed the men whose names were printed on the back of the fly leaf and Bradford picked out some four or five men who were worth sufficient to pay all the liabilities the bank had.

And thereupon counsel for plaintiff offered said leaflets in evidence, to which counsel for defendant Bradford then and there objected, but the court overruled such objection and the said leaflets were read to the jury and are as follows:

Circular on Front: "Organized October 17, 1888.

Capital Savings Bank, No. 609 F Street N. W., Washington, D. C.

Capital Stock, $50,000.00.

Then follows a history of the officers of the bank. * * *

Same Front.

Officers and Directors.

* * * * * * *

23 Directors. * * *
J. T. Bradford."

Then follows a glowing advertisement of the bank.

Circular.

"Capital Savings Bank," #804 F Street N. W., Washington, D. C.

Officers. * * *

Directors. * * *
James T. Bradford."

Then follows an announcement stating how successful the operations of the bank have been.

(It was agreed by counsel that the originals of these leaflets may be exhibited to the Court of Appeals on the hearing of this cause.)

The counsel for the plaintiff then called as a witness HENRY E. BAKER who testified that he was secretary, stockholder and director of the bank; that Bradford between 1897 and 1902 attended meetings, that he did not attend often, that he was there in spring of 1902.

Thereupon plaintiff rested.

The foregoing was all the evidence in the case.

Thereupon counsel for the plaintiff upon all the evidence in the case prayed the court to instruct the jury as follows:

The jury are instructed that the evidence establishes that
24 the defendant Bradford was a shareholder in the Capital savings bank at least down to March 13, 1897, at which time he claims to have sent to the president and directors of the said bank the letter of that date offered in evidence by him. They are further instructed that if they shall find that the board of directors refused

to make the transfer requested and that after that time and for a period of five years or more said Bradford acted as a director of said bank, and as a shareholder therein, and as such shareholder voted in shareholders' meetings either in person or by proxies authorized by him, then they are instructed that the fact, if it be a fact, that he sent the directors of the bank the said letter of March 13, 1897 and delivered to the secretary of the company his certificates of stock in connection therewith will not relieve him of liability, and the verdict should be for the plaintiff, as against said Bradford.

If the jury find from the evidence that during the period of deposits by the plaintiff, with the Capital savings bank, the defendant Bradford acted as a director of said bank, and was with his knowledge, held out to the public as such by said banking company and that he claimed to be a shareholder in said banking company and voted as such shareholder at shareholders' meetings, then they are instructed that their verdict should be against the said Bradford and in favor of the said plaintiff, there being no evidence of any change in the relations of said Bradford to the bank after such acts as director and shareholder.

If you find that the defendant Bradford on March 13,
25 1897, sent the president and directors the letter of March 13, 1897, of which he produces a copy in his testimony, but further find that the shares of stock mentioned therein were never transferred from the said Bradford, and that the said Bradford with the acquiescence of said company continued thereafter for several years to act as the owner of said shares, and to vote from time to time at shareholders' meetings either in person or by proxy as owner thereof, then you would be authorized to find that his intention to transfer said shares was abandoned and his notice of withdrawal contained in said notice of March 13, 1897, waived and that he remained a shareholder and subject to all the liabilities of a partner in such banking business. To each of which prayers the counsel for Bradford separately objected but the court overruled each of said objections and granted each of said prayers to which rulings of the court the counsel for Bradford duly and separately excepted.

Thereupon the counsel for defendant Bradford upon all the evidence in the case prayed the court to instruct the jury as follows:

Defendant Bradford's Prayers.

½. The jury are instructed that upon all the evidence in this case the plaintiff is not entitled to recover against the defendant, James T. Bradford, and that their verdict should be in favor of said defendant in this motion.

1. If the jury finds from all the evidence in this case, that the letter dated March 13, 1897, a copy of which has been given in evidence by the defendant in this action, and which is designated
26 as Defendant's Exhibits No. 1, to the deposition of James T. Bradford filed in this action, was written by him at

the date thereof and then sent by mail by him from Baltimore, Maryland, addressed to the president and directors of the Capital savings bank; that it was received in due course of mail by some one of the executive officers of said bank and was afterwards brought to the attention of the board of directors of said bank while in session, then the jury is instructed as matter of law that at the expiration of thirty days from the date of receipt of said letter by said executive officer, all liability of said Bradford as a member and stockholder of said bank, ceased; and if the jury further finds that the account of the plaintiff was not opened with said bank until after the expiration of said thirty day period, then the jury is instructed that its verdict in this case should be in favor of the defendant, Bradford.

2. If the jury finds from all the evidence in this case that the letter dated March 13, 1897, a copy of which has been given as evidence in this action, and which is designated as Defendant's Exhibit No. 1 to the deposition of James T. Bradford filed in this action, was written by him at the date thereof and sent by mail by him from Baltimore, Maryland, addressed to the president and directors of the Capital savings bank; that it was received in due course of mail by some one of the executive officers of said bank and was afterwards brought to the attention of the board of directors of said bank while in session, and if the jury further finds from all the evidence that at or about the date of said letter the defendant, Bradford, sold all his stock in said bank to one Howard H. Williams,
27 who was then a member of said joint stock company, then the jury are instructed as a matter of law that upon such sale being made and notified to said board of directors or any executive officer of said bank as aforesaid, all liability of said Bradford as a member and stockholder of said bank ceased. And if the jury further finds that the account of plaintiff was not opened with said bank until after the sale aforesaid, then the jury is instructed that its verdict in this case should be in favor of the defendant, Bradford.

3. Even if the jury find from all the evidence in this action that the paper dated the 9th day of October, A. D. 1899 and given in evidence by the plaintiff in this action, was signed by the defendant, Bradford, it, the jury, is instructed as matter of law that said letter was not legally sufficient to restore said Bradford to membership in said joint stock association known as the Capital savings bank, nor to reimpose liability on him as such.

4. Even if the jury shall find from all the evidence in the case that the paper dated the 9th day of October, A. D., 1899, and given in evidence by the plaintiff, was signed by the defendant, Bradford, it, the jury is instructed that unless the jury shall further find from all the evidence in this action that the said Bradford wrote and sent said letter with the intention of resuming membership and liability as a stockholder in said association, that the sale of said stock to Williams (if they find such sale to have been made), was rescinded

by mutual consent of Bradford and Williams and that after said letter was written and sent the plaintiff had notice of the fact of its having been written and of its contents, and made further deposits on the faith of the membership of said Bradford in which event the liability of said Bradford, if, upon the instructions heretofore
28 given the jury shall find such liability, would be limited to such balance in favor of the plaintiff as was created by deposits made after it received notice of the writing and contents of said letter and made deposits on the faith thereof, if the jury shall find that any such deposits were so made.

5. Even if the jury shall find from all the evidence in this action that the paper dated the 9th day of October, A. D. 1899, and given in evidence by the plaintiff, was signed and sent by the defendant, Bradford, it, the jury is instructed that unless the jury shall further find from all the evidence in this action that the said Bradford wrote and sent said letter with the intention of resuming membership and liability as a stockholder in said association, that the sale of said stock to Williams (if they find such sale to have been made) was rescinded by mutual consent of Bradford and Williams and that after said letter was written and sent the plaintiff had notice of the fact of its having been written and of its contents, and made further deposits on the faith of the membership of said Bradford, in said bank, in which event the liability of said Bradford, if, upon the instructions heretofore given the jury shall find such liability, would be limited to such balance in favor of the plaintiff as was created by deposits made after it received notice of the writing and contents of said letter and made deposits on the faith thereof, if the jury shall find that any such deposits were so made. To each of which prayers counsel for the plaintiff separately objected and the court sustained each of said objections and refused to grant any one of said prayers.

29 Thereupon counsel for Bradford duly and separately excepted to each of the rulings of the court.

All the plaintiff's prayers were read to the jury and none of the defendant Bradford's prayers were so read.

Thereupon counsel for plaintiff proceeded to argue the case to the jury and in the course of his argument said, "This defendant knew that the bank was in failing circumstances and yet allowed deposits to be made up to a few days before it closed its doors, in many States of this Union such conduct would land him in the penitentiary as it ought to do here." To which language counsel for Bradford objected on the ground that it was wholly unwarranted by any evidence in the case and said counsel duly reserved an exception thereto.

Thereupon the court proceeded to charge the jury as follows:

Charge to the Jury.

Gentlemen of the jury, you have nothing to determine except whether your verdict shall be for or against Mr. Bradford, and for

or against Mr. Douglass. The only question is as to the liability of these two men. The theory of their liability is that there was a partnership in which these people were all engaged in the transaction of business. The form of the partnership was simply that of a corporation, but it was not incorporated; they were undertaking to do business as a voluntary association, and some of the evidences of partnership are the certificates of stock that were issued by the firm, so to speak, by the bank. The form of the certificates is very similar to the form of certificates that would be issued by a corporation, perhaps the same in form. I call attention to the language
30 of the certificate, as it may have a little bearing on this question of the transfer of stock and the rights of the parties. Notwithstanding they had their by-laws and their contract between themselves, aside from the mere form of the certificate, yet when they issued this stock and gave it as an evidence of ownership of capital in the firm they provided this language:

"This certifies that Joseph F. Johnson, of Washington, D. C., is the owner of one share of the capital stock of the Capital savings bank, of the par value of $100, transferable only on the books of the bank by endorsement on the back of this certificate and the surrender of the same."

There are a number of these shares of stock, that have been offered in evidence, that were held by Mr. Bradford, having no endorsement whatever, the blank for the endorsement not having been filled. I think all those that were issued to Mr. Bradford himself are in that form—I think I am correct in that. Whether or not that has any significance in the matter of establishing the position of Mr. Bradford is for you gentlemen to determine. I simply call attention to that in connection with the blank on the back of the certificates.

There is some other evidence to which I want to call your attention, one piece at least. There is a letter written in which Mr. Bradford claims to have withdrawn from the partnership on the 13th of March, 1897, and on the strength of this the defense is made that he was no longer a partner after that—at least within thirty days from that time. The language of that letter is this:

31 "BALTIMORE, *March 13th*, 1897.

To the president and board of directors of the Capital savings bank,
609 F street N. W., Wash., D. C.:

I hereby give notice of my withdrawal, as per constitution of the same, as a stockholder in said institution, and I direct that you transfer the stock standing in my name to Howard H. Williams, Washington, D. C., and oblige,

Yours truly, JAMES T. BRADFORD."

Under the by-laws evidently he had the right to withdraw entirely, but he couples his withdrawal with a request to the board of

directors to transfer his stock to Mr. Williams. When they receive that letter there is a disposition on the part of the board of directors not to do that; they seem to raise some question about it; and, according to the testimony, they refuse to transfer his stock.

Then it appears, at least there is evidence tending to show—that after that was done Mr. Bradford acquiesced in their refusal, from the fact that he participated in meetings thereafter and treated this stock as belonging to him.

It is claimed on the other side that that was an absolute withdrawal from membership in the concern, but it was coupled with this request to transfer the stock, and that request was not granted.

Now, following on in the line of the testimony here, we find
32 a letter dated October 9, 1899, about two years and a half after the date of that letter of withdrawal, in which he uses this language—and this is written on the Capital Savings Bank paper, and dated at the office here in Washington:

"CAPITAL SAVINGS BANK,
WASHINGTON, D. C., *Oct.* 9, 1899.

To whom it may concern:

This is to certify that I hereby authorize Mr. Douglass B. McCary to act for me and in my stead at the regular annual meeting of the stockholders, of the Capital savings bank to be held on Tuesday evening, Oct. 10, 1899.

JAS. T. BRADFORD."

That is given as evidence tending to show that he had acquiesced in their refusal to transfer the stock, and the argument is therefore made, and you are asked to find from that, whether or not he did not withdraw that letter of withdrawal, whether his acts have not withdrawn that letter of withdrawal from the company so as to leave him still a partner in the concern. If he acted as a director afterwards and acted as stockholder, he was still liable, under the law, as a partner, because if he withdrew from the concern then his stock must be left with the board or it must be transferred to somebody. If he was going to sell the stock to a man who was already a member, there was no necessity of his getting the approval of the board for that transfer. If he had sent the letter of absolute withdrawal from the concern he would have been relieved from liability as a partner from that time unless he had incurred some obligation from which he could not have been relieved by withdrawal.

33 I simply call attention, in considering the question of what effect you shall give the testimony, to the law as I shall give it to you now in the instructions that have been asked by counsel for the plaintiff:

The jury are instructed that the evidence establishes that the defendant Bradford was a shareholder in the Capital savings bank at least down to March 13, 1897, at which time he claims to have sent to the president and directors of the said bank the letter of that date

offered in evidence by him. They are further instructed that if they shall find that the board of directors refused to make the transfer requested and that after that time and for a period of five years or more said Bradford acted as a director of said bank and as a shareholder therein, and as such shareholder voted in shareholders' meetings, either in person or by proxies authorized by him, then they are instructed that the fact, if it be a fact, that he sent the directors of the bank the said letter of March 13, 1897, and delivered to the secretary of the company his certificates of stock in connection therewith, will not relieve him of liability, and the verdict should be for the plaintiffs, the National Benefit Association and Isidore Small as against said Bradford.

If the jury find from the evidence that, during the periods of deposits by the plaintiffs, National Benefit Association and Isidore Small, respectively, with the Capital savings bank, the defendant Bradford acted as a director of said bank and was, with his knowledge, held out to the public as such by said banking company, and that he claimed to be a shareholder in said banking com-
34 pany, and voted as such shareholder at shareholders' meetings, then they are instructed that their verdict should be against the said Bradford and in favor of said plaintiffs, respectively, there being no evidence of any change in the relations of said Bradford to the bank after such acts as director and shareholder.

If you find that the defendant Bradford on March 13th, 1897 sent the president and directors the letter of March 13, 1897, of which he produces a copy in his testimony, but further find that the shares of stock mentioned therein were never transferred from the said Bradford, and that the said Bradford with the acquiescence of said company continued thereafter for several years to act as the owner of said shares and to vote from time to time at shareholders' meetings, either in person or by his proxy, as owner thereof then you would be authorized to find that his intention to transfer said shares was abandoned and his notice of withdrawal, contained in said notice of March 13, 1897, waived, and that he remained a shareholder and subject to all the liabilities of a partner in such banking business.

I believe that is all I have to say with reference to Mr. Bradford.

Mr. RIDOUT: Inasmuch as your honor has called the attention of the jury to Mr. Williams' proof, I ask your honor to call attention to the proof that the board arbitrarily refused to transfer the stock and ordered the secretary not to do so; that the jury should take that into consideration in determining Mr. Bradford's attitude.

The COURT: Yes.

35 Mr. RIDOUT: I also ask your honor to call attention to section 12 of the agreement which provides that he may transfer to a member without procuring the consent of the board.

The COURT: I think I did that. What is the first point you suggest.

Mr. RIDOUT: My first point is that the jury must also take into

consideration Terrell's testimony, that they arbitrarily refused to transfer the stock.

The COURT: But that, I tell you, would make no difference if he afterwards acquiesced in it; it would make no difference whether the refusal was arbitrary or was based upon reason.

Mr. RIDOUT: I except to that.

The COURT: The evidence is that there was an arbitrary refusal on their part to comply with his request.

Mr. RIDOUT: I except to so much of your honor's charge as comments on the effect of the arbitrary refusal.

The COURT: The effect of the refusal, of course, was that he did not transfer his stock to Williams; but the effect of his acquiescence in it would be just the same whether they refused arbitrarily or for some good reason.

As to the other defendant, Robert T. Douglass, he claims that he never was a stockholder in that concern, and has given you his reasons. His testimony shows that he did have a share of stock placed in his name while he was an infant, and which still seems to have remained in his name, but he claims that he was never the real beneficial owner of the stock. I am going to leave that
36 question with you, gentlemen. If you find that that share was there and that he was one of the shareholders, he would have to be held as a partner, although he held only one share of stock. Unless you find the stock was actually owned by somebody else, and was only standing in his name nominally, and that that fact was known to the other parties and the depositors as well, I do not see how he can escape liability. He claims that he was a minor when that share was placed in his name, and on that subject I have granted the following prayer of his counsel;

If the jury believe from the evidence that when this share of stock was put in the name of Robert T. Douglass that he was an infant under twenty-one years of age, and if they further believe from the evidence that he did no affirmative act when he became of age to ratify such act, they must find for the defendant.

That is, you could not hold him liable on that certificate of stock unless he had done some affirmative act after he became twenty-one years of age. He could take title as an infant to that or to a piece of real estate if it was conveyed to him, but he could not be held responsible as a partner unless he did some affirmative act to ratify his ownership after he became twenty-one years of age. I will give the defendant the benefit of that instruction as to the law.

His counsel have asked another instruction, which I have granted, as follows:

If the jury believe from the evidence that this share of stock was purchased and put in the name of defendant Robert T. Douglas as a trustee for his grandmother, Mary M. Douglas, and that he held it as such and used it as such, they must find for the defendant.
37 I do not know that there is much evidence on that subject; whatever there is you are to consider.

When you reach a conclusion in this case, it will be simply to find for or against the defendants. The rest of it we can arrange.

Mr. RIDOUT: I ask your honor, on behalf of Bradford, to charge the jury that if they believe from the evidence that the Bradford stock was not really his, though standing in his name, then he would not be liable as a stockholder. The same rule your honor has just announced as to Douglas would apply to Bradford.

The COURT: There is no claim that he transferred it at all. There is no evidence upon which to base that charge.

Mr. RIDOUT: I except.

A JUROR: Before we retire we would like to know when that last dividend was paid.

The COURT: When it was declared?

The JUROR: When it was declared.

The COURT: July 12, 1897.

Thereupon, counsel for the defendant Bradford asked the court to instruct the jury that they should take into consideration the question of Bradford's acquiescence in the refusal to transfer his stock, Terrell's testimony that it was arbitrary but the court refused so to instruct the jury to which ruling and to so much of the charge of the court as comments on the effect of the arbitrary refusal to transfer the stock counsel for defendant Bradford excepted.

Upon the conclusion of the charge of the court counsel for
38 defendant Bradford severally and separately excepted to the repetition in the charge of the court to each of the plaintiff's prayers and said counsel also asked the court to instruct the jury as follows:

If the jury believe from all the evidence that the Bradford stock though standing in his name was not really his, then he would not be liable as a stockholder after April 1897, to which prayer counsel for plaintiff objected which objection was sustained by the court and said prayer refused to which ruling of the court, counsel for Bradford duly reserved an exception.

Each and all the exceptions hereinbefore set forth were separately reserved during the trial and each exception was duly and separately noted upon his minutes by the justice presiding, before the jury retired to consider their verdict.

Whereupon the jury retired to consider their verdict, and afterwards returned in court with a verdict in favor of the plaintiff for $4,855.59 with interest from November 24, 1902 and the said defendant James T. Bradford now tenders to the court this his bill of exceptions and prays the court to settle and sign the same which is accordingly done this 14th. day of April, 1905, now for then.

JOB BARNARD, *Justice.*

Agreed to:

A. A. B.

J. R.

39 *Designation of Record.*

Filed May 5, 1905.

In the Supreme Court of the District of Columbia.

NATIONAL BENEFIT ASS'N
vs.
JAMES T. BRADFORD. } No. 45851.

The defendant and appellant, James T. Bradford designates as constituting the record on appeal herein, the following:

1. Declaration
2. Pleas of Bradford
3. Joinder of issue thereon
4. Verdict
5. Judgment
6. Order of severance
7. Appeal bond
8½. Term extended
9. Time to file transcript extended
10. Bill of exceptions submitted
11. Bill of exceptions settled and filed
12. Bill of exceptions.

JNO. RIDOUT,
For Bradford.

All except items 1, 2 & 11 & 12 to be by memorandum only.
JNO. RIDOUT.

40 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, } *ss:*
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 39, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 45,851, at law, wherein The National Benefit Association, a corporation, is plaintiff, and John R. Lynch *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 29th day of May, A. D. 1905.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1561. James T. Bradford, appellant, *vs.* National Benefit Association, a corporation. Court of Appeals, District of Columbia. Filed May 31, 1905. Henry W. Hodges, clerk.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 1561.

JAMES T. BRADFORD, APPELLANT,

vs.

THE NATIONAL BENEFIT ASSOCIATION, A CORPORATION, APPELLEE.

BRIEF OF APPELLEE.

A. A. BIRNEY,
J. DAWSON WILLIAMS,
Attorneys for Appellee.

In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

No. 1561.

JAMES T. BRADFORD, APPELLANT,

vs.

THE NATIONAL BENEFIT ASSOCIATION, A CORPORATION, APPELLEE.

BRIEF OF APPELLEE.

Statement of Case.

The appellee, The National Benefit Association, was a depositor with the Capital Savings Bank, which failed November 24, 1902, owing to said appellee the sum of $4,859.59 (Rec. pp. 2 and 3).

This suit was brought against James T. Bradford and others as partners, doing business under the name of the Capital Savings Bank, to recover the unpaid deposits.

The salient facts are as follows: The Capital Savings Bank was an unincorporated joint stock company of which appellant Bradford was a member and a director. Shares might be transferred only on the books of the association (Rec. p. 13). Bradford gave evidence tending to prove that on March 13, 1897, he sent a letter of withdrawal to the bank as a director and stockholder therein, and requested a transfer of his shares to one Howard H. Williams, also a stockholder. This transfer was refused. On the trial it was claimed by counsel for Bradford that this notice of withdrawal terminated Brad-

ford's connection with the bank and relieved him of liability to subsequent depositors. To meet this contention the plaintiff offered evidence tending to prove that for more than five years after the date of the letter of withdrawal, and until after the failure of the bank (November 24, 1902), Bradford continued to act as a director and stockholder thereof. He voted in person and by authorized proxy at stockholders' meetings, attended directors' meetings, and took an active part therein, and assented to the continued publication of his name as a director in the advertisements of the bank. It also appeared from the testimony of said Howard H. Williams that his arrangement with Bradford was that if the stock could be transferred he would take it, "but the directors refused to transfer the stock and therefore the negotiation was not completed." He never voted the shares or had possesssion of the certificates.

The court instructed tbe jury in substance, first, that if, after the transfer of his shares was refused, Bradford continued for five years or more to act as a stockholder and a director, the fact that he sent the alleged letter of withdrawal would not relieve him of liability to depositors during that time; and, second, that if, after the letter of withdrawal and refusal to transfer his shares, Bradford, with the acquiescence of the company, continued to act as owner of the shares and to vote them at stockholders' meetings, the jury would be authorized to find that his intention to transfer the shares was abandoned, and his withdrawal waived.

ARGUMENT.

The rulings of the trial court were based upon principle and reason.

First. As to Bradford's alleged withdrawal. Counsel for appellant presents the theory that to render Brad-

ford liable it must be shown that he was in fact a shareholder. This is erroneous. He certainly would be liable if a shareholder, but he would be equally liable if he participated in the conduct of the business as an ostensible partner therein or director thereof, although he did not own a dollar of stock. It is an elementary principle of the law of partnership that one who holds himself out to the world by his acts or conduct as actually a partner, renders himself liable as partner, though, in fact, he may not be such.

Bates on Partnership, sec. 90.

In this case (*a*) Bradford's name was on the books of the bank as a partner; (*b*) he had, standing in his name *and unendorsed*, certificates of shares of stock transferable only on the books of the bank, after he should endorse them; (*c*) his name was with his knowledge carried upon the leaflet advertisements of the bank as one of its directors; (*d*) he personally attended one or more directors' meetings; and (*e*) so late as after the failure of the bank he permitted his shares to be voted in his name as one of the owners of the bank.

There was no act or circumstance to indicate to any person any change in his relations to the bank as they existed prior to his letter of March, 1897. It is true that Bradford boldly negatives all these acts, but the jury have, by their verdict, found them. The dates of the particular acts found were as follows:

March 13, 1897, his letter to the directors (Rec. p. 19).

October 9, 1899, proxy as a shareholder (Rec. p. 20).

February 6, 1900, attended meeting of directors and made remarks (Rec. p. 12).

April 9, 1902, voted his shares by proxy (Rec. p. 12).

December 20, 1902, voted his shares by proxy (Rec. p. 12).

April or May, 1902, discussed the leaflets and the names thereon (Rec. p. 14).

Baker's testimony (Rec. p. 15) does not give dates, but is clear that Bradford between 1897 and 1902 attended meetings of the directors.

These facts being proved, the law certainly makes Bradford liable. The mere fact that he wrote the letter of March, 1897, could not destroy their effect.

Hedges Appeal, 63 Penn St. 273.
Taft *vs.* Warde, 111 Mass. 518.
Am. & Eng. Ency. of Law, vol. 17, p. 642.
Collyer on Partnership, p. 634, tit. Joint Stock.
Doubleday *vs.* Muskett, 7 Bing. 58.
Pettis *vs.* Atkins, 60 Illinois, 454.
1 Parsons on Contracts, sec. 144.

II.

Bradford Never Withdrew as a Partner.

There is no basis whatever for the claim that Bradford withdrew, as claimed by defendant's prayer No. 1. Under section 12 of the by-laws (Rec. p. 7) a member might withdraw. In such case he must have given notice and *surrendered his stock to the company for cancellation.* Bradford did not do this, or intend to do it, but acting under by-law No. 16, he expressed a wish to *transfer his shares*, a very different thing from turning them in to the company.

The Transfer Incomplete.

The officers of the bank, upon receipt of the letter of March 13, 1897, refused to transfer his stock. This may have been because the certificates were not endorsed; the reason is not given. In this refusal Bradford unequivocally acquiesced. There is no evidence that he at any time objected to the refusal to transfer, or that he

took any steps to compel it, and all the parties acted as if the scheme of sale was abandoned. On this point the court went no farther than to say that these circumstances if proven would authorize the jury to find that the notice of withdrawal was waived by mutual consent and that Bradford remained a shareholder. We submit that a much stronger prayer than this might well have been granted. If *as to third persons*, Bradford was not the owner of the shares, who was the owner? Might Williams have been held? Could he not have rightfully insisted that his proposed purchase was never completed and that he never became a shareholder?

The shares were, by their terms, transferable only on the books of the bank (Rec. p. 13), and some of the certificates required Bradford's signature to warrant such transfer. They were not so signed and were not transferred. The proposed purchaser knew the necessity for these formalities, and testified that his purchase was conditional upon the bank's transferring the stock. This being refused, the negotiation was not completed (Rec. p. 14). Bradford continued to vote his shares and to act as director. Williams never asserted any rights of ownership. All three parties, Bradford, Williams, and the bank, tacitly agreed that their relations should continue as before the letter of March, 1897, and acted accordingly. Bradford certainly may not now disaffirm his conduct and shoulder the liability upon Williams, to whom the stock was never transferred.

The finding of all the facts involved was properly left to the jury, and their verdict should not be disturbed.

Admission of Minutes.

It is assigned for error that the minutes of the stockholders and directors' meetings were admitted in evidence, though the point is not pressed in the brief for appellant.

It was competent to show the way in which Bradford *with his consent and participation* was treated by the corporation, as well to show their continued holding of him out as a director, as his acquiescence therein; and to show the corporate acts the minutes were the best evidence.

3 Ency. of Evidence, p. 650.
Beach on Private Corp., sec. 295.
Methodist Chapel *vs.* Hurick, 25 Me. 354.

The Remarks of Counsel.

Stress is laid upon the alleged improper remarks of counsel to the jury (Rec. p. 18). But whether they are or are not the fair subject of criticism can not be of interest, for the reason that appellant asked no action of the trial justice in the premises and took no exception to anything he did or did not do. The exception taken was no more than an objection, such as was made in Lorenz *vs.* U. S., 24 App. D. C. p. 391, and the legal position in which counsel left it is entirely similar to the situation in Yeager *vs.* U. S., 16 App. D. C. 356, 362.

We rely with confidence upon these two decisions as controlling appellant's assignment of error on this point.

No ruling of the court having been made, there is nothing of which the appellant can assign error in this behalf.

Thompson on New Trials, sec. 957.

See, also—

R. R. Co. *vs.* Dashiell, 7 App. D. C. 507, 515.

It is submitted the judgment should be affirmed.

A. A. BIRNEY,
J. DAWSON WILLIAMS,
Attorneys for Appellee.